IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 102 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JK PAPER LIMITED - Petitioner(s)
Versus
. - Respondent(s)

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Appearance :
SINGHI & CO for Petitioner(s) : 1,
None for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 08/10/2007

ORAL JUDGMENT

1. The present petition is for sanctioning the reduction of the share capital vide Resolution dated 17.3.2007 at the Special General Meeting of the Shareholders of the Company.

2. It may be recorded that vide order dated 10.5.2007 passed by this Court (Coram: M.R. Shah, J.) in Company Application No.225 of 2007 it was observed that no procedure under Section 101(2) of the Companies Act (hereinafter referred to as “the Act”) as regards the creditor would be required to be followed. The aforesaid order was an ex-parte order.
3. In the present petition on 10.5.2007 while admitting the petition, notice was ordered to be issued by paper publication in Indian Express (English daily) and Sandesh (Gujarati daily), both Ahmedabad editions and the publication in the Government Gazette was dispensed with.
4. The affidavit dated 16.6.2007 has been filed by Mr.Sureshchandra Gupta, the Chief General Manager of the applicant Company together with the paper publication in Indian Express as well as Sandesh daily newspapers. Further, vide affidavit dated 30.8.2007 filed by Shri Sureshchandra Gupta, Chief General Manager, no objection is received by the petitioning company or its learned advocate pursuant to the notice.
5. It has further been stated that the Bombay Stock Exchange as well as National Stock Exchange have granted their no objection and copies of such no objection letters are produced together with the aforesaid affidavit dated 30.8.2007.
6. As per the provisions of Section 100 of the Act read with Section 101 of the Act the power of this Court for grant of sanction would be attracted, if any special Resolution of the Company is to result into reduction of share capital and for such purpose the confirmation may be required.

If the resolution is considered, it does provide for reduction of the preferential share capital into unsecured loan of Rs.52 crore. Therefore, accumulative redeemable preferential share capital shall get converted into unsecured loans of the Company with the same amount. Reduction of such preferential share capital and conversion thereof into unsecured loan is a composite part and, therefore, when this Court is to grant sanction for confirming the resolution effecting reduction of the share capital the said aspect of conversion into unsecured loan would also be required to be considered.

7. The second part of the resolution speaks for payment by instalment to the such unsecured loan of Rs.52 crore by different dates of 29th November, 2017, 29th November, 2018 and 29th November, 2019. The said second part of the resolution is providing for the mode of payment to such unsecured creditors of loan of Rs.52 crore, would not attract the power of this Court for grant of sanction under Section 100 read with Section 101 of the Act. As such it would be a matter for the Company to thereafter make the payment to unsecured creditors of such loan of Rs.52 crore, as may be permissible in law. If the powers of this Court are not attracted, which may fall under Section 100 read with Section 101 of the Act, the question may not arise for grant of sanction to such part of the resolution. The reference may be made to the decision of this Court in Company Petition No.190 of 2006 decided on 16.7.2007 in the matter of **Rishiroop Rubber (International) Ltd.**

8. No other adverse circumstances are brought to the notice of this Court so far as the first part of the resolution for

reduction of the preferential share capital and the conversion thereof into unsecured loan of the same amount.

9. Hence, the reduction of the preferential share capital of Rs.52 crore and thereby conversion of the same into unsecured loan of Rs.52 crore is confirmed vide resolution dated 17.3.2007 and the minutes thereof to that extent is approved

10. As the mode of payment to such unsecured loan is outside the scope of Section 100-101 of the Act and hence, is not required to be confirmed in view of the reasons recorded hereinabove and no opinion is expressed, except observing that the petitioning company may resort to such mode as may be permissible in law for payment.

11. Consequently, the minutes, which shall stand approved, would read as under:-

> Consequent to the reduction of the share capital in the manner proposed by converting the same into unsecured loan of Rs.52 crore, the paid-up share capital of Rs.52 crore (Rupees fifty-two crore only) representing 52,00,000 Cumulative Redeemable Preference Shares shall stand cancelled and become NIL on and from July 1, 2006 being the effective date of conversion of all the CRPS into an unsecured loan of Rs.52,00,00,000/- (Rupees fifty-two crore only).

12. The publication of the order for reduction of the Cumulative Redeemable Preference shares and the

registration thereof be published in Indian Express (English daily) and Sandesh (Gujarati daily), both Ahmedabad Editions, within two weeks after registration of the same with the office of Registrar of Companies so as to make it known to the public at large.

13. No further publication in Government Gazette shall be rerquired.

14. Petition is allowed to the aforesaid extent.

(Jayant Patel, J.)

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